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1 JUDGE SLAVIN: Good evening, everyone. I
2 call out of recess Lee County Zoning Board of
3 Appeals hearing on Petition Number 20-P-1557,
4 BSW DevCo, LLC's, petition for a Special Use
5 Permit to repower a wind energy system in
6 portions of May and East Grove Townships here in
7 Lee County.

8 For those of you who might be listening on
9 YouTube and have lost your Zoom meeting ID, it
10 is 915-3923-9154, and the passcode is 209840.

11 If you happen to be listening to us just
12 on your cell phone and you want to view us on
13 YouTube, use your browser and go to
14 www.youtube.com. In the search bar, type "Lee
15 County IL," I-L for Illinois, "Zoning Board of
16 Appeals." Don't be concerned with upper- or
17 lowercase letters. Find the session date you
18 want from the drop-down menu, and whala.

19 If you need assistance, you may call
20 Ms. Duffy's technical assistance hotline,
21 815.973.3449.

22 With us in person tonight are Zoning Board
23 members -- honorable Zoning Board members: the
24 Chair, Mr. Forster; Vice Chair, Mr. Buhrow;

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1 Mr. Bothe is present; Mr. Hughes is present;
2 Mr. Pratt is with us remotely on Zoom.

3 Petitioner is here by its attorney,
4 Mr. Streicker, without any Petitioner's
5 representatives. Our IT specialist, Alice, is
6 present. Our ever-supple court reporter,
7 Callie, is present. Himself is present. And
8 the fine Zoning Officer, Ms. Duffy, is present,
9 along with the astute State's Attorney of Lee
10 County, Mr. Boonstra. And that should do it for
11 attendance.

12 I see no one in the courtroom, which
13 probably -- well, undoubtedly means there is no
14 one in the rear jury deliberation room or
15 downstairs. Okay. So there are no Interested
16 Parties present.

17 Tonight begins the final phase, the Zoning
18 Board's finding of facts and recommendations.
19 It is a -- although certainly a public hearing
20 and the public is entitled to view and hear us,
21 it is nonparticipatory from the public.

22 And the floor is open for motions for
23 findings of fact and/or recommendations from the
24 Zoning Board of Appeals.

1 MR. HUGHES: Your Honor.

2 JUDGE SLAVIN: Yes, sir. Whoops, wait a
3 minute. I have got the wrong -- yes, sir.

4 MR. HUGHES: Let's start with Draft 1.
5 The motion being, The Lee County Zoning Board of
6 Appeals (hereinafter "ZBA" or "Zoning Board")
7 finds that on November 6th, 19- -- or 2020,
8 excuse me, 2020, BSW DevCo, LLC, (hereinafter
9 "the Petitioner," "the developer," "BSW," or
10 simply "Big Sky") a wholly-owned subsidiary of
11 Ever Power Wind Holdings, Inc., filed a petition
12 with the Lee County Zoning Administration
13 Office, which was numbered 20-P-1557, requesting
14 a Special Use to repower the existing Big Sky
15 wind energy conversion system (hereinafter,
16 "WECS," "wind farm," "development," or
17 "project") by decommissioning all existing wind
18 turbine generators (hereinafter "WTGs") and
19 replacing the same with purportedly more
20 efficient models, along with some upgraded
21 foundations and collection systems, no more than
22 58 of the same being in Lee County's East Grove
23 and May Townships.

24 As further background, the ZBA finds that:

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1 Following the submission of the
2 application, proper notice was published in the
3 Amboy News on November 7th -- 27th, 2020, and in
4 the Dixon Telegraph on November 28th, 2020, and
5 due diligence mailings -- please eliminate the
6 "certified" -- of the notice were sent to
7 property owners adjacent to the project
8 boundary;

9 Prior to the hearing, the Board, under the
10 authority provided by its own Rules, engaged the
11 services of Tim Slavin, a retired circuit court
12 judge, as the Facilitator of the proceedings;

13 The first stage of the public hearing
14 regarding the petition for the requested Special
15 Use Permit was for your Lee County Zoning Board
16 of Appeals, quotations, the Board or the ZBA, to
17 accept testimony, hear arguments, and receive
18 public comments;

19 Over the course of the first stage,
20 everyone -- the Petitioner and members of the
21 public -- were given a complete and fair
22 opportunity to be heard. Each was given the
23 chance to present evidence, including witnesses
24 and exhibits, cross-examine the witnesses of

1 others, and to present a closing argument or
2 public comment or submit the same in writing;

3 The evidentiary portion of the hearing
4 began on December 16th, 2020, and concluded on
5 January 27th, 2021, consisting of four total
6 sessions, the initial one beginning at 7 o'clock
7 p.m. and those following at 6 o'clock p.m., all
8 heard in the main courtroom on the Third Floor
9 of the Old Lee County Courthouse. The totality
10 of these sessions of the first stage comprised,
11 in total, approximately -- and I believe it may
12 be seven hours of hearing time;

13 Throughout the hearing process, the
14 proceedings adhered to the applicable State of
15 Illinois COVID-19 guidelines for public
16 gatherings;

17 These guideline provided for gatherings of
18 no more than ten people during the first stage
19 or more than 25 from after that to the end of
20 the proceedings;

21 So no more than that number were allowed
22 to be in the hearing room at any given time; but

23 Within the building, accommodations were
24 made for ten Interested Parties to occupy the

1 contiguous former jury deliberation room and ten
2 more in the first-floor stairwell lobby space.
3 Those additional total 20 potential attendees
4 would have been able to participate by Zoom from
5 those spaces, where Ms. Duffy and Lee County's
6 IT Department Head, Mr. Mike McBride, had the
7 equipment ready to be used. However, there were
8 never enough spillover attendees at any one
9 session to make use of either of those spaces;

10 During the coronavirus mitigation
11 protocol, within the hearing room all attendees
12 were required to wear masks, except when
13 speaking, and social distancing was maintained
14 by using a seating protocol that kept
15 participants 6 or more feet apart; and

16 Additionally, Interested Parties were also
17 given the opportunity to remotely and virtually
18 participate in the process:

19 By videoconferencing on the Zoom platform
20 through the use of a compatible device at a
21 location of their choosing; or

22 By teleconferencing on the Zoom platform
23 through the use of a cell phone at a location of
24 their choosing;

1 The proceedings were also broadcast on
2 YouTube, during which the viewers could see and
3 hear the proceedings take place in realtime.

4 Lastly, the entirety of the proceedings
5 was taken down by a certified shorthand reporter
6 and subsequently transcribed. Those transcripts
7 of all testimony, arguments, public comments,
8 and ZBA debate were, and continue to be,
9 available on the Zoning and Planning web pages
10 within the Lee County website.

11 We, the members of the Lee County Zoning
12 Board of Appeals, heard all of the evidence
13 produced and examined the exhibits.

14 JUDGE SLAVIN: That's a motion. Do I hear
15 a second?

16 MR. BOTHE: Second.

17 JUDGE SLAVIN: Hearing a second, the floor
18 is open for debate.

19 Is there anything you want to say about
20 your own motion, Mr. Hughes?

21 MR. HUGHES: Actually, as I was reading
22 it, I did note one correction that I want to
23 make to amend my own motion.

24 JUDGE SLAVIN: Sure.

1 MR. HUGHES: The first bullet point,
2 Following the submission of the application,
3 proper notice was published in the Amboy News
4 on -- the actual publishing date was November
5 25th. The certification was November 27th. So
6 I believe, based on the wording there, that
7 should be November 25th, 2020.

8 JUDGE SLAVIN: Okay. That's more of a
9 scrivener's thing.

10 Okay. Anything else?

11 MR. HUGHES: No.

12 JUDGE SLAVIN: Okay. Any other Board
13 member wish to address the motion? Now is the
14 time to complain or point out anything you think
15 is wrong.

16 (No verbal response.)

17 JUDGE SLAVIN: Seeing no indication of a
18 want to do so, I will put the question. The
19 question being put is on the adoption of the
20 motion as orally proposed by Mr. Hughes and
21 displayed on the screen here in the courtroom
22 and on Zoom.

23 Adoption of the motion requires a vote by
24 the majority. The vote will be by voice. All

1 those in favor indicate by saying aye.

2 (All those simultaneously
3 responded.)

4 JUDGE SLAVIN: All those opposed by nay.

5 (No verbal response.)

6 JUDGE SLAVIN: Motion is adopted.

7 MR. PRATT: Judge, can you hear me?

8 JUDGE SLAVIN: Yup, sure can.

9 MR. PRATT: The screen with the motion is
10 not showing up on Zoom.

11 JUDGE SLAVIN: Really? Okay. Thanks.

12 MR. PRATT: At least I can't see it.

13 MS. HENKEL: Can you log into Zoom, Judge?

14 JUDGE SLAVIN: I certainly can.

15 MS. HENKEL: And share the document.

16 JUDGE SLAVIN: That we'll find out.

17 (A discussion was held off the
18 record.)

19 JUDGE SLAVIN: Mike Pratt, can you see it
20 now?

21 MR. PRATT: Yes, now I can see it. Thank
22 you.

23 JUDGE SLAVIN: Thank you for bringing that
24 to our attention.

1 All right. Floor is open again.

2 MR. BUHROW: Mr. Chairman.

3 JUDGE SLAVIN: Mr. Buhrow.

4 MR. BUHROW: I would like to move Section
5 2, which reads, The Lee County Zoning Board of
6 Appeals finds that six people took the witness
7 stand, and one individual was called to the
8 stand twice over the four hearing dates. Those
9 witnesses, in the order of their appearance,
10 with a very brief summary of what they had to
11 say, include as follows:

12 Mr. James Kutey, of Third Planet Wind
13 Power, LLC, as a green energy consultant and the
14 lead developer for BSW DevCo, LLC's, repower
15 project. Mr. Kutey testified about the various
16 subjects relevant to the proposed repower,
17 including, but not limited to, the Petitioner's
18 ownership structure, an overview of the
19 technical details, and planned repower staged
20 construction, the planned two-county array of 97
21 GE's 2.7-116 family of WTGs, and the intended
22 decommissioning of at least two, parentheses,
23 Number 84 and 86, parentheses, and as many as 7
24 WTGs, the economic benefits to the landowners

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1 and the Lee County community, the anticipated
2 market for generated power, expected
3 governmental agreements, setbacks, variances,
4 complaint resolution, property values, and his
5 view of how the proposed repower would fit into
6 the Lee County Ordinance standards for Special
7 Uses.

8 He went on to outline what the Petitioner
9 expected to show through expert testimony as to
10 shadow flicker, noise, effects on off-air
11 television and other communications. He also
12 explained the practical reasons that the
13 developer was seeking an extended two-year
14 waiver of the Lee County Ordinance 10-2A-3
15 requirement that the project be established,
16 parentheses, substantially underway,
17 parentheses, within one year.

18 Mr. Terry VanDeWalle, Independence, Iowa,
19 office manager and biologist for Stantec,
20 offered by the Petitioner, testified about
21 various environmental issues. He outlined the
22 bird and bat study, the site characterization
23 report, and communications with IDNR. Included
24 were the developer's promises to comply with

1 IDNR's recommendations with avian mortality
2 monitoring, raising the WTG's cut-in speed
3 during certain periods of the year, and applying
4 for incidental take authorization for the ornate
5 box turtle. He said that the developer -- he
6 said that the developer engage in avoidance and
7 mitigation measures as to other listed species.

8 Mr. Chris Howell, a project manager for
9 Burns & McDonnell, was offered by the
10 Petitioner. Mr. Howell testified that he
11 oversaw an acoustics study for the proposed
12 project. He explained various aspects of sound
13 theory, governmental noise level criteria, his
14 opinion of the conservative approach used in the
15 analysis, and then the relevant results of the
16 process.

17 Mr. Aaron Anderson, director of renewable
18 energy for Burns & McDonnell, was offered by the
19 Petitioner. He testified that he oversaw a
20 shadow flicker study for the proposed project.
21 He explained shadow theory, the absence of laws
22 governing WECS-related shadow flicker as an
23 industry, an industry shadow flicker standard,
24 and the relevant results of the modeling study.

1 Mr. Dennis Jimeno, a telecommunications
2 engineer for Comsearch, testified about the
3 study prepared under his direction as to the
4 effects the proposed repowering would have on
5 microwave, AM/FM radio, land, mobile and
6 emergency services, mobile phone, and
7 over-the-air and satellite television signals.

8 That's the motion.

9 JUDGE SLAVIN: Before I ask for a second,
10 would you accept a friendly amendment that we
11 add the word --

12 MR. HUGHES: "Would."

13 JUDGE SLAVIN: -- "would" under Mr. Terry
14 VanDeWalle?

15 MR. BUHROW: Yes.

16 JUDGE SLAVIN: Otherwise there's no verb
17 in the sentence.

18 All right. Do I hear a second?

19 MR. BOTHE: Second.

20 JUDGE SLAVIN: Hearing a second, the floor
21 is open for debate.

22 It's your motion, Mr. Buhrow. Anything
23 you want to address?

24 MR. BUHROW: The only change we had

1 compared to what was written in as I spoke was
2 in the first paragraph, about the GE's 2.7
3 family. That was the only change compared to
4 what was written.

5 JUDGE SLAVIN: Oh, I didn't hear you -- I
6 thought you said 2.X. Okay.

7 Okay. Any other Board member wish to
8 address?

9 (No verbal response.)

10 JUDGE SLAVIN: All right. Seeing no
11 indication of a want to do so, I will put the
12 question. The question being put is on the
13 adoption of the motion as orally proposed by
14 Mr. Buhrow, shown on the screen here in the
15 courtroom and presumably on Zoom.

16 Adoption of the motion requires a vote by
17 the majority. The vote will be by voice. All
18 those in favor indicate by saying aye.

19 (All those simultaneously
20 responded.)

21 JUDGE SLAVIN: Opposed by nay.

22 (No verbal response.)

23 JUDGE SLAVIN: The motion is adopted.

24 In just a minute the floor is open again.

1 Okay. It is.

2 MR. HUGHES: Then let's move on to Draft
3 Number 3. The motion being, The Lee County
4 Zoning Board of Appeals finds that the following
5 exhibits were admitted into evidence by the
6 Facilitator and considered by the Board:

7 Pet Number 1, BSW DevCo, LLC's,
8 application binder with a corrected map showing
9 the accurate location of the substation in Lee
10 County;

11 Pet Number 2, hard copy summary of some of
12 James Kutey's testimony;

13 Pet Number 3, copy of the required mailed
14 notice;

15 Pet Number 4, certificate of publication
16 from the Amboy News;

17 Pet Number 5, certificate of publication
18 from the Dixon Telegraph;

19 Pet Number 6, letter to Zoning Officer Dee
20 Duffy from Stantec Consulting Services, Inc.,
21 responding to the IDNR comments and
22 recommendations;

23 Pet Number 7, United States Department of
24 Commerce letter advising that appropriate

1 federal agencies represented on the
2 Interdepartment Radio Advisory Committee of the
3 repowering plans for Big Sky have been notified,
4 and, that after a period of review, no radio
5 frequency blockage issues have been indicated;

6 Pet Number 8, copy of executed 2019 AIMA;

7 Pet Number 9, hard copy summary of Terry
8 VanDeWalle's testimony;

9 Pet Number 10, hard copy of summary of
10 Kris Howell's testimony;

11 Pet Number 11, hard copy of Aaron
12 Anderson's testimony;

13 Pet Number 12, hard copy of Dennis
14 Jimeno's testimony.

15 JUDGE SLAVIN: That's a motion. Do I hear
16 a second?

17 MR. BOTHE: Second.

18 JUDGE SLAVIN: Hearing a second, debate.
19 Your -- courtesy to you, Mr. Hughes.

20 MR. HUGHES: No comment.

21 JUDGE SLAVIN: Any other Board member?

22 MR. PRATT: Judge, I was just curious
23 whether -- I didn't receive a copy of the
24 executed 2019 AIMA, which is fine, but I just

1 wanted to confirm that there was one submitted.

2 MR. HUGHES: Yes, there was. It was
3 listed as -- well, we have got it listed here.
4 It was Petitioner's Exhibit Number 8. It showed
5 both sides having signed it.

6 MR. PRATT: Okay. Very good. I just
7 wanted to confirm that it was there.

8 JUDGE SLAVIN: Okay. Reasonable.
9 Anybody else?

10 (No verbal response.)

11 JUDGE SLAVIN: Seeing no indication, I
12 will put the question. The question being put
13 is on the adoption of the motion as orally
14 proposed by Mr. Hughes, shown on the screen here
15 in the courtroom and on presumably on Zoom.

16 Adoption of the motion requires a vote by
17 the majority. The vote will be by voice. All
18 those in favor indicate by saying aye.

19 (All those simultaneously
20 responded.)

21 JUDGE SLAVIN: Opposed by nay.

22 (No verbal response.)

23 JUDGE SLAVIN: Motion is unanimously
24 adopted.

1 Okie dokie.

2 MR. BUHROW: Mr. Chairman.

3 JUDGE SLAVIN: Slainte.

4 MR. BUHROW: On Section 4, which reads,
5 that motion --

6 JUDGE SLAVIN: Oops, just a minute. I'm
7 sorry. Ms. Duffy's mouse is a little jumpy.
8 She has a jumpy mouse.

9 Yes, sir.

10 MR. BUHROW: All right. Number 4, which
11 reads, The Lee County Zoning Board of Appeals
12 finds that following the close of the
13 testimonial phase, the Board heard or read what
14 could be characterized as closing arguments or
15 public comment from the following:

16 Mr. David Streicker, attorney for the
17 Petitioner, who advanced all the reasons shown
18 during the hearing as to why the Lee County ZBA
19 should recommend to the Lee County Board that
20 BSW DevCo's petition should be approved and a
21 Special Use Permit be issued;

22 Next, Mr. Adam Lusz, an Interested Party,
23 opined about the continuing proliferation of
24 energy production development in Lee County and

1 its future implications.

2 JUDGE SLAVIN: That is a motion. Do I
3 hear a second?

4 MR. BOTHE: Second.

5 JUDGE SLAVIN: Hearing a second, the floor
6 is open for debate.

7 Anything you want to say about your own
8 motion, Mr. Buhrow?

9 MR. BUHROW: No, sir.

10 JUDGE SLAVIN: Any other Board member?

11 (No verbal response.)

12 JUDGE SLAVIN: And, Mike Pratt, remember,
13 I can't see you because you're behind my back,
14 so you have got to speak up.

15 MR. PRATT: Okay. Very well.

16 JUDGE SLAVIN: Hearing no indication, I
17 will put the question. The question being put
18 is on the adoption of the motion as orally
19 proposed by Mr. Buhrow, seconded, as shown here
20 on the screen in the courtroom and presumably on
21 Zoom.

22 Adoption of the motion requires a vote by
23 the majority. The vote will be by voice. All
24 those in favor indicate by saying aye.

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(All those simultaneously
responded.)

JUDGE SLAVIN: Opposed by nay.

(No verbal response.)

JUDGE SLAVIN: That motion is adopted as
well.

Okie dokie.

MR. HUGHES: Draft Number 5. The motion
to be, The Lee County ZBA finds that, in
repowering, the Petitioner:

Was previously granted a Special Use
Permit after a previous repower hearing and
County Board action for the following numbered
WTGs in Lee County: 58, 59, 60, 61, 62, 63, 64,
66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77,
78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90,
92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102,
103, 105, 106, 107, 108, 110, 111, 114, 115,
116, 117, 118, 120, 121, 124, and 125.

JUDGE SLAVIN: Stop a minute. Mike Pratt,
are you able to hear this?

MR. PRATT: It just went out and now it's
back. I lost him when he was on Number 96.

JUDGE SLAVIN: 97, 98, 99, 100, 101, 102,

1 103, 105, 106, 107, 108, 110, 111, 114, 115,
2 116, 117, 118, 120, 121, 124, and 125.

3 Thought I'd help him out with his voice.

4 MR. PRATT: Very good. Thanks.

5 MR. HUGHES: I'm surprised he didn't pick
6 that up, because we weren't using the mic the
7 last time.

8 MS. HENKEL: We corrected the mic issue,
9 so that won't happen again.

10 MR. HUGHES: Okay.

11 Moving on to the next bullet point.

12 Stated that the two previously-
13 approved General Electric Wind Turbine Generator
14 (WTG) models 2.3-116 and 2.5-116 were no longer
15 available, and that, if approved, the repower
16 would be done with the General Electric family
17 of 2.7-116 models;

18 Presented evidence that the proposed
19 different WTGs would continue the project's
20 generative capacity at 239.4 MW, or megawatts.

21 I'm sorry, I -- the changes, I didn't
22 realize I was getting that fast.

23 JUDGE SLAVIN: That's all right. It's
24 more efficient for me to do it now. Otherwise I

1 have to read the transcript -- okay.

2 MR. HUGHES: Will be decommissioning and
3 removing at least two and up to seven of the
4 development's existing WTGs in Lee County; and

5 Is not requesting:

6 Any new WTG locations; or

7 Any alterations to the existing
8 substation; or

9 Any alterations to the existing
10 transmission lines; or

11 A new O and M facility.

12 Would be repowering by utilizing nothing
13 but the current Special Use Permit parcels of
14 real estate;

15 Due to an amendment in the Lee County
16 Ordinance, since the previous repower Special
17 Use was granted, is requesting 10 setback
18 waivers for 10 WTGs, all on lands owned -- lands
19 owned by participating property owners;

20 Is requesting relief from County Ordinance
21 20-2A-3, which requires the Zoning Administrator
22 to revoke a Special Use Permit where said use
23 has not been established, substantially
24 underway, within one year from the date the

1 Special Use was granted, and asking, instead,
2 that it be extended to 36 months;

3 Will be using all the existing towers of
4 the maximum 56 repowered WTGs in the Lee County
5 portion of the Big Sky Development;

6 WTG -- where you have "in the whole of,"
7 it should be changed to "Lee County portion of."
8 You just had your cursor under it.

9 JUDGE SLAVIN: How about that?

10 MR. HUGHES: Except you need to now
11 eliminate "the whole of" or "whole of" above.

12 JUDGE SLAVIN: Oh, I see. Okay. Okay.
13 Try that.

14 MR. HUGHES: That works.

15 Will be replacing certain components of
16 all the repowered WTGs in Bureau and Lee
17 Counties with General Electric Series Number
18 2.7-116 nacelles and blades, but de-rated by
19 software to the -- excuse me -- de-rated by
20 software to reduce the --

21 JUDGE SLAVIN: Whoops. Just a minute.

22 Is that right so far?

23 MR. HUGHES: To reduce the power rating to
24 2.3 megawatts, or MW, and 2.5 MW for the

1 respective configurations; and --

2 JUDGE SLAVIN: You said plural for -- does
3 that look right, for that clause?

4 MR. HUGHES: Yeah. I'm just re-looking at
5 some of the notes that I made here.

6 JUDGE SLAVIN: Okay. Sure.

7 MR. HUGHES: So bear with me a moment.

8 JUDGE SLAVIN: Of course. That's what
9 this is for.

10 MR. HUGHES: Okay. I'm going to change
11 this a little bit because there's a following
12 bullet point that I confused this with.

13 So, let's see, blades -- but de-rated by
14 software to 2.3-1-6 [as said] and 2.5-1-6 [as
15 said] profiles.

16 JUDGE SLAVIN: 2.3-1-6 and 2.5?

17 MR. HUGHES: Yeah, no, 2.3, and I said 1-6
18 but I meant 116.

19 JUDGE SLAVIN: Oh, blade length.

20 MR. HUGHES: Dash 116, yeah.

21 JUDGE SLAVIN: Yeah.

22 MR. HUGHES: And 2.5.

23 JUDGE SLAVIN: Dash.

24 MR. HUGHES: Yup. 116 profiles.

1 JUDGE SLAVIN: Got it. Got it.

2 And then is that --

3 MR. HUGHES: But de-rated by software
4 profiles.

5 Okay. And that would be a period there.

6 JUDGE SLAVIN: A comma to catch the "and."

7 MR. HUGHES: Yes. And what you just
8 eliminated, I took it -- cut it rather than
9 eliminated it completely, because that will be
10 part of the next checkpoint.

11 Okay. So for the next point, the software
12 reduces the power rating to 2.3 megawatts and
13 2.5 megawatts for the respective configurations.

14 JUDGE SLAVIN: 2 --

15 MR. HUGHES: -- point 3.

16 JUDGE SLAVIN: And 2.5?

17 MR. HUGHES: Yeah, 2.5.

18 For the respective configurations.

19 Everything after that gets deleted.

20 JUDGE SLAVIN: Got it.

21 MR. HUGHES: Okay. Thank you for bearing
22 with me. I kind of got my own notes
23 criss-crossed.

24 JUDGE SLAVIN: It will happen, believe me.

1 Yup, I'm with you.

2 MR. HUGHES: Each repowered WTG will have
3 the same blade length of 116 meters as that
4 allowed by the 2019 Special Use Permit;

5 Would be temporarily widening access roads
6 and foundations -- foundation areas.

7 JUDGE SLAVIN: Just a minute. Let me
8 catch up to you, if you don't mind.

9 Okay. Yup.

10 MR. HUGHES: Just momentarily. Okay.

11 Foundation areas during the repowering
12 construction, but would be returning those
13 access roads and foundation areas.

14 JUDGE SLAVIN: Caught up.

15 MR. HUGHES: Foundation areas to their
16 previously-existing dimensions;

17 Will be using 97 percent of the existing
18 underground collection system.

19 JUDGE SLAVIN: Whoops.

20 MR. HUGHES: Yeah.

21 System, and up to 3 percent, or about
22 4,000 feet, of it will be upgraded with new
23 collection lines;

24 Will be creating a temporary laydown yard

1 or staging area of approximately six acres near
2 the current O and M building.

3 JUDGE SLAVIN: Whoops. That happens in
4 Word processing.

5 MR. HUGHES: Yes, it does.

6 JUDGE SLAVIN: Okay. While I'm correcting
7 that, how does it look to you?

8 MR. HUGHES: After all those machinations,
9 I think it's fine.

10 COURT REPORTER: Can I -- you did not take
11 out the "not."

12 MR. HUGHES: Oh, I'm sorry. Thank you.

13 JUDGE SLAVIN: Okay. That's a motion.
14 Do I hear a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Hearing a second, the floor
17 is open for debate.

18 Courtesy to you, Mr. Hughes, first.

19 MR. HUGHES: I think -- I think that's
20 enough for me.

21 JUDGE SLAVIN: All right. Any other Board
22 member?

23 MR. PRATT: Judge.

24 JUDGE SLAVIN: Yes, sir.

1 MR. PRATT: Glen, I have in my notes in
2 two different places that they were asking for
3 11 setback waivers. You changed it to 10. Can
4 you explain that?

5 MR. HUGHES: As I went back and reviewed
6 the material, there were only 10 listed. So I
7 didn't -- I don't know if that 11 was a
8 scrivener's error, but there were -- and I
9 recounted them a couple of times, both in terms
10 of a couple places in the testimony and --

11 JUDGE SLAVIN: I have two setbacks for one
12 turbine.

13 MR. PRATT: Yeah, that's what I also had,
14 too.

15 MR. HUGHES: That's where I -- okay. Then
16 I missed that, and we should put that back to
17 the 11. I was going by the actual --

18 JUDGE SLAVIN: I shouldn't speak up, but
19 that's where I got it from.

20 MR. HUGHES: And I understand, and I --
21 now that you said that, I was focusing more on
22 the number of turbines.

23 JUDGE SLAVIN: Oh, where are we in the --

24 MR. HUGHES: That would be in -- due to

1 the amendment of.

2 JUDGE SLAVIN: Ah, yes. Got it.

3 Actually, I didn't change it.

4 MR. PRATT: Judge and Glen, I had another
5 question. On the number of -- when you went
6 through the list of WTGs, in the first
7 paragraph, 74 was one -- is that one that they
8 agreed not to recommission, I thought, in 2019?
9 Is it one landowner that -- there was a big
10 issue behind it. And I wasn't able to access
11 all that, but I thought that one was left out of
12 the 2019 agreement. And I don't have access or
13 a way to prove that either.

14 MR. HUGHES: I did consider that, and I
15 think there was some discussion about
16 recommendations, but I -- as I remembered it, we
17 kind of left it to them to get a waiver.

18 The other thing is, I was unsure whether
19 the County -- and at that point, the reference,
20 when we're listing the numbers, talks about the
21 County Board action. So I was unaware of
22 whether or not the County Board had approved
23 that 74 above and beyond any recommendation that
24 we might have made or general discussion,

1 because, as I remember, that residence was
2 actually built after the turbine was
3 established, and so there was some -- there was
4 some discussion there regarding that.

5 So, again, I was unclear, and I felt it
6 was easier to leave 74 in than to remove it.

7 MR. PRATT: I don't have a problem, as
8 long as we're not missing the obvious there, and
9 I can't distinguish the obvious. I can't come
10 up with that either.

11 JUDGE SLAVIN: Any other Board member want
12 to address this? Mr. Buhrow.

13 MR. BUHROW: Mike or Glen, was that the
14 one we're talking about that had the green shed
15 and the fellow was living in the green shed?

16 MR. PRATT: It may have been. I think
17 Glen is right, I think it was left to the
18 company to try to come to an agreement with him.
19 He was objecting to it, that he didn't want it
20 repowered, but I don't think it ever got
21 resolved with us. Later if it did, I don't have
22 any access to that.

23 MR. HUGHES: And that was my recollection
24 as well, because it came out that that was

1 not -- it was not -- that Big Sky had put that
2 in there, but that that residence or what was
3 designated as a residence was built after the
4 fact.

5 MR. BOTHE: It's GR Partnership that owns
6 that.

7 MR. PRATT: So it's not -- to me, it
8 doesn't make me throw the motion out. Unless I
9 say -- if somebody has a strong reason to object
10 to it with me, I won't object to the whole
11 motion on that.

12 JUDGE SLAVIN: Well, any other Board
13 member, debate?

14 (No verbal response.)

15 JUDGE SLAVIN: Seeing no indication of a
16 want to do so, I'm going to put the question.
17 The question being put is on the adoption of the
18 motion as orally proposed by Mr. Hughes,
19 seconded, and now after -- what did you call it,
20 machinations, some good ones, now displayed on
21 the board here -- on the screen here in the
22 courtroom and presumably on Zoom.

23 Adoption of the motion requires a vote by
24 the majority. The vote will be by voice. All

1 those in favor indicate by saying aye.

2 (All those simultaneously
3 responded.)

4 JUDGE SLAVIN: Opposed by nay.

5 (No verbal response.)

6 JUDGE SLAVIN: Motion is adopted.

7 Okay. Floor is back to you.

8 MR. BUHROW: Mr. Chairman.

9 JUDGE SLAVIN: Mr. Buhrow.

10 MR. BUHROW: We'll start on Number 6 and
11 work through some of these smaller motions now.

12 Number 6 reads, The Lee County Zoning
13 Board of Appeals finds that, in BSW DevCo's
14 application, and through testimony, the
15 Petitioner has stated that it will be bound by
16 any and all proposals and representations in its
17 petition and made under oath at the public
18 hearing before the Lee County ZBA.

19 JUDGE SLAVIN: Didn't give you a choice of
20 a find or did not find, but that's your motion.

21 MR. BUHROW: Yeah, finds.

22 JUDGE SLAVIN: Do I hear a second?

23 MR. BOTHE: Second.

24 JUDGE SLAVIN: Hearing a second, the floor

1 is open for debate.

2 Anything you want to say about your own
3 motion, Mr. Buhrow?

4 MR. BUHROW: No, sir.

5 JUDGE SLAVIN: Any other Board member?

6 MR. PRATT: Yes, Judge. Me again.

7 I was thinking of adding another line to
8 that, and I don't know whether I just do that as
9 another motion or just throw it out for --

10 JUDGE SLAVIN: That's up for you. Another
11 motion is always easier, but you can move to
12 amend the motion that's been seconded.

13 MR. PRATT: Well, maybe I would like to
14 have some discussion with the other Board
15 members on whether it's necessary to add this
16 line.

17 I wanted to talk about that they also
18 agreed to honor everything that they said -- to
19 honor everything agreed to in the approved 2019
20 Special Use Permit in addition to everything
21 else that was said there, and I'm under the
22 assumption that that was stated in testimony.

23 MR. HUGHES: It was.

24 JUDGE SLAVIN: And I think it's cleaner

1 for you to make another motion, but you do it
2 any way you want.

3 MR. PRATT: Well, that's fine. I don't
4 want to step on Craig.

5 MR. BUHROW: No, I agree. Make another
6 motion, Mike.

7 MR. PRATT: So what happens to yours?

8 JUDGE SLAVIN: Nothing. We're going to
9 vote on it.

10 MR. HUGHES: We'll just add one in.

11 JUDGE SLAVIN: I'll show you how it works
12 in a minute.

13 Any other debate?

14 (No verbal response.)

15 JUDGE SLAVIN: Seeing none, I will put the
16 question. The question being put -- when it's
17 shorter ones, I feel more comfortable reading
18 it -- is whether the Lee County Zoning Board of
19 Appeals finds that in BSW DevCo's application
20 and through testimony, the Petitioner has stated
21 that it will be bound by any and all proposals
22 and representations in its petition and made
23 under oath at the public hearing before the Lee
24 County ZBA.

1 Adoption of the motion requires a vote by
2 the majority. The vote will be by voice. All
3 those in favor indicate by saying aye.

4 (All those simultaneously
5 responded.)

6 JUDGE SLAVIN: Opposed by nay.

7 (No verbal response.)

8 JUDGE SLAVIN: Now is a good time, Mike,
9 if you want to make another motion.

10 MR. PRATT: I'll try.

11 JUDGE SLAVIN: And I'll help you get
12 started here. Just a minute.

13 Okay. That will get you started.

14 MR. PRATT: The Lee County ZBA finds that
15 BSW DevCo, LLC -- DevCo, LLC, has agreed --
16 well, let's state it this way: has stated in
17 testimony that they have agreed to honor
18 everything that was approved in the 2019 Special
19 Use Permit.

20 JUDGE SLAVIN: I'm going to make a mistake
21 from what you said, but just bear with me.

22 MR. PRATT: That's fine. Go right ahead.

23 JUDGE SLAVIN: I'm not sure this is right.
24 Probably butchered that, but it gives you a

1 start.

2 MR. PRATT: No, that gets me to the same
3 point. That's fine. You have got to clean it
4 up a little bit there yet.

5 MR. HUGHES: You have "in testimony" in
6 there twice.

7 JUDGE SLAVIN: Oh, yup.

8 Give 'er a read there, Mr. Pratt.

9 MR. PRATT: Yes. The Lee County Zoning
10 Board of Appeals finds that BSW DevCo, LLC, has
11 stated in testimony that it will honor all the
12 conditions of its 2019 granted Special Use
13 Permit. That's my motion.

14 JUDGE SLAVIN: Okay. Do I hear a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Debate. Courtesy to you
17 first, Mr. Pratt.

18 MR. PRATT: I heard that in testimony but
19 I couldn't find it anywhere, and I think that --
20 I believe it to be true.

21 JUDGE SLAVIN: Any other Board member?

22 MR. HUGHES: I would concur with Mike,
23 although, I guess, from that very standpoint,
24 since it was part of the testimony -- or I don't

1 know if it was in writing, but I do believe it
2 was part of the testimony, that the first one
3 actually becomes all-inclusive when it says
4 through application and -- or Applicant and
5 through testimony, but I guess it doesn't hurt
6 to have -- to have it reiterated.

7 JUDGE SLAVIN: All right. Any other Board
8 member?

9 (No verbal response.)

10 JUDGE SLAVIN: Seeing no indication, I
11 will put the question. The question being put
12 is whether the Lee County Zoning Board of
13 Appeals finds that BSW DevCo, LLC, has stated in
14 testimony that it will honor all of the
15 conditions of its 2019 granted Special Use
16 Permit.

17 Adoption of the motion requires a vote by
18 the majority. The vote will be by voice. All
19 those in favor indicate by saying aye.

20 (All those simultaneously
21 responded.)

22 JUDGE SLAVIN: Opposed by nay.

23 (No verbal response.)

24 JUDGE SLAVIN: The motion is carried.

1 All right. Back to you, gentlemen.

2 MR. HUGHES: Moving on to Draft Number 7.

3 The Lee County ZBA finds that there would not be
4 any lighting or glare in the proposed repowered
5 Big Sky Development spilling over onto
6 operations of motor vehicles, pedestrians, or
7 lands -- lands used in the vicinity.

8 JUDGE SLAVIN: Lands used -- land uses,
9 maybe?

10 MR. HUGHES: Either.

11 JUDGE SLAVIN: Okay. Land uses in the
12 vicinity.

13 All right. Do I hear a second?

14 MR. BOTHE: Second.

15 JUDGE SLAVIN: Hearing a second, debate.

16 Anything you want to say about your own
17 motion, Mr. Hughes?

18 MR. HUGHES: No, sir.

19 JUDGE SLAVIN: Any other Board member?

20 (No verbal response.)

21 JUDGE SLAVIN: Seeing no indication of a
22 want to do, I will put the question. The
23 question being put is whether the Lee County ZBA
24 finds that there would not be -- would not be,

1 sorry, any lighting or glare in the proposed
2 repowered Big Sky Development spilling over onto
3 operators of motor vehicles, pedestrians, or
4 land uses in the vicinity.

5 Adoption of the motion requires a vote by
6 the majority. The vote would be by voice. All
7 those by aye.

8 (All those simultaneously
9 responded.)

10 JUDGE SLAVIN: Opposed by nay.

11 (No verbal response.)

12 JUDGE SLAVIN: The motion is adopted.

13 All righty.

14 MR. BUHROW: Mr. Chairman, moving on to
15 Number 8. The Lee County ZBA finds that the
16 evidence produced that, other than during the
17 repower construction, there would not be any
18 vibration associated with the proposed repowered
19 Big Sky Development.

20 JUDGE SLAVIN: All right. I think that's
21 the motion displayed. Do I hear a second?

22 MR. BOTHE: Second.

23 JUDGE SLAVIN: Hearing a second, the floor
24 is open for debate.

1 Anything you want to say about your
2 motion, Mr. Buhrow?

3 MR. BUHROW: No, sir.

4 JUDGE SLAVIN: Any other Board member?

5 (No verbal response.)

6 JUDGE SLAVIN: Seeing no indication of a
7 want to do so, I will put the question. The
8 question being put is whether the Lee County ZBA
9 finds that from the evidence produced -- from
10 the evidence produced that, other than during
11 repowered construction, there would not be any
12 vibration associated with the proposed repowered
13 Big Sky Development.

14 Adoption of the motion requires a vote by
15 the majority. The vote will be by voice. All
16 those in favor indicate by saying aye.

17 (All those simultaneously
18 responded.)

19 JUDGE SLAVIN: Opposed by nay.

20 (No verbal response.)

21 JUDGE SLAVIN: Motion is adopted. Okay.

22 MR. HUGHES: Moving on to Draft Number 9,
23 the motion being, The Lee County ZBA finds that
24 the character of the land within the footprint

1 of the Big Sky complex is agricultural.

2 JUDGE SLAVIN: Do I hear a second?

3 MR. BOTHE: Second.

4 JUDGE SLAVIN: Hearing a second, I put the
5 question -- no, I wont.

6 Debate. Mr. Hughes?

7 MR. HUGHES: No comment.

8 JUDGE SLAVIN: Any other Board member?

9 (No verbal response.)

10 JUDGE SLAVIN: Seeing no indication of a
11 want to do so, I put the question now whether,
12 The Lee County ZBA finds that the character of
13 the land within the footprint of the Big Sky
14 complex is agricultural.

15 Adoption of the motion requires a vote by
16 the majority. The vote will be by voice. All
17 those in favor indicate by saying aye.

18 (All those simultaneously
19 responded.)

20 JUDGE SLAVIN: Opposed by nay.

21 (No verbal response.)

22 JUDGE SLAVIN: Motion is adopted.

23 Backatcha.

24 MR. BUHROW: Mr. Chairman, Number 10. The

1 Lee County ZBA finds that, from the Petitioner's
2 application and through testimony produced, that
3 there would be little noise from the proposed
4 repower affecting the zoning districts specified
5 in this particular section of the Lee County
6 Ordinance.

7 JUDGE SLAVIN: Take a look real quick. I
8 think I got it.

9 MR. BUHROW: Yeah.

10 JUDGE SLAVIN: Does that look right,
11 Mr. Buhrow?

12 MR. BUHROW: Yes.

13 JUDGE SLAVIN: Okay. Do I hear a second?

14 MR. BOTHE: Second.

15 JUDGE SLAVIN: Hearing a second, the floor
16 is open for debate.

17 Mr. Buhrow, anything you want to say?

18 MR. BUHROW: No, sir.

19 JUDGE SLAVIN: Any other Board member want
20 to address it?

21 MR. HUGHES: Yeah, I'm unclear on it. I
22 don't know whether -- I mean, we -- there will
23 be further motions relative to the sound study
24 and mitigation or lack of sound, actually, plus

1 we have the construction period. So I'm unsure
2 whether to add, from an operational standpoint,
3 or whether to address it, the noise as being
4 from a construction period.

5 This particular motion to me is a little
6 more vague. It's not necessarily uncalled for,
7 but I believe it's addressed in some other
8 motions that we may have later, and not sure
9 that it fully addresses the noise issue.

10 JUDGE SLAVIN: I mean, I can't tell you
11 any substance, but I tell you it's in there
12 because that's the wording of an Ordinance
13 section you have.

14 MR. HUGHES: Okay.

15 JUDGE SLAVIN: Now, I understand what
16 you're saying. Maybe those other things address
17 that, but it's in there because you have got
18 a --

19 MR. HUGHES: Particular Ordinance.

20 JUDGE SLAVIN: That's it.

21 MR. HUGHES: And I am aware of that.

22 JUDGE SLAVIN: And you don't have to
23 address every Ordinance.

24 MR. HUGHES: Okay. It's not going to hurt

1 anything.

2 MR. BUHROW: Yeah, at this point we're
3 talking about construction noise versus
4 operating noise.

5 JUDGE SLAVIN: Well, maybe you better --

6 MR. HUGHES: That's what I -- kind of what
7 I was --

8 MR. BUHROW: Yeah, because it talks about
9 the noise from the repower.

10 MR. PRATT: The only --

11 MR. HUGHES: That would appear to me to be
12 operational noise, which I would concur with
13 that. But I guess there may need to be
14 clarification between whether it's construction
15 or operational.

16 MR. PRATT: I would like to add that, by
17 putting the word "little" in there we have made
18 a -- stated an opinion on the noise level, and
19 I'm not sure we should do that. We should just
20 say that there would be noise and not quantify
21 the amount of noise.

22 MR. HUGHES: Well, again, that gets back
23 to whether we're talking about construction or
24 operational period.

1 MR. PRATT: Yeah, either -- but either
2 way, we don't know what -- I don't know what --
3 your "little" is not the same as my "little."

4 MR. HUGHES: Yeah, we can change "little"
5 to "some" maybe. But, again, I think we need a
6 clarification as to what -- that's my concern.
7 We can either eliminate this one and address it
8 more in some future motions or we can be more
9 specific about this one.

10 MR. PRATT: It's Craig's motion, whatever
11 he wants to do.

12 MR. BUHROW: I would change it, if it's --
13 to "some noise," if that's --

14 MR. HUGHES: Do you want to clarify
15 whether it's construction period or whether it's
16 operating?

17 MR. BUHROW: Well, it states in the
18 repower, so that's -- I'm assuming it's --
19 repower means construction.

20 MR. HUGHES: Well, and, see, I would read
21 the repower to be the repowered operation, so.

22 MR. FORSTER: Either one.

23 MR. HUGHES: Yeah, which is it? The
24 construction is going to be substantially more

1 noise than the operational period is.

2 MR. BUHROW: Maybe not.

3 MR. HUGHES: You've got cranes and stuff
4 moving in and out of there.

5 MR. BUHROW: Well, that, but. . .

6 MR. HUGHES: Okay. We can leave it
7 broader like that. Maybe that's inclusive of
8 both if we leave it that way.

9 MR. BUHROW: But, Judge, you said that's
10 more or less how the Ordinance states it though?

11 JUDGE SLAVIN: Yeah. Yes, that's what I
12 said, correct.

13 MR. HUGHES: Let's go ahead and leave it
14 broader.

15 MR. BUHROW: Yeah.

16 JUDGE SLAVIN: Okay. Except -- so do I
17 hear a second to change this to "some" noise?
18 I'm not going through the motion on that for one
19 word.

20 MR. BOTHE: Second.

21 JUDGE SLAVIN: Okay. Any other thing you
22 want to say about your motion, Mr. Buhrow?

23 MR. BUHROW: No.

24 JUDGE SLAVIN: Any other Board member want

1 to address it? Mr. Pratt, anything else?

2 MR. PRATT: No.

3 JUDGE SLAVIN: All right. I'm going to
4 put the question. The question being put is
5 whether the Lee County ZBA finds that, from the
6 Petitioner's application and through testimony
7 produced, there would be some noise from the
8 proposed repower affecting the zoning districts
9 specified in this particular section of the Lee
10 County Ordinance.

11 Adoption of the motion requires a vote by
12 the majority. The vote will be by voice. All
13 those in favor indicate by saying aye.

14 (All those simultaneously
15 responded.)

16 JUDGE SLAVIN: Opposed by nay.

17 (No verbal response.)

18 JUDGE SLAVIN: Motion is adopted.

19 And one more and we'll break.

20 MR. HUGHES: Then let's move on to Number
21 11. The Lee County ZBA finds that, other than,
22 perhaps, during the repower construction, there
23 would not be any air pollution associated with
24 the proposed repowered Big Sky Development.

1 JUDGE SLAVIN: Okay. Do I hear a second?

2 MR. BOTHE: Second.

3 JUDGE SLAVIN: Hearing a second, the floor
4 is open for debate.

5 Anything you want to say about yours,
6 Mr. Hughes?

7 MR. HUGHES: No.

8 JUDGE SLAVIN: Any other Board member?

9 (No verbal response.)

10 JUDGE SLAVIN: Seeing no indication, I
11 will put the question. The question being put
12 is whether the Lee County ZBA finds that, other
13 than, perhaps, during the repower construction,
14 there would not be any air pollution associated
15 with the proposed repowered Big Sky Development.

16 Adoption of the motion requires a vote by
17 the majority. The vote will be by voice. All
18 those in favor indicate by saying aye.

19 (All those simultaneously
20 responded.)

21 JUDGE SLAVIN: Opposed by nay.

22 (No verbal response.)

23 JUDGE SLAVIN: Motion is adopted.

24 And a 10-minute recess. Let's call it 25

1 after, I guess. Off the record, Callie.

2 (A recess was taken at 7:15 p.m.
3 and proceedings resumed at
4 7:27 p.m.)

5 JUDGE SLAVIN: Okay. We're out of recess,
6 we're live on Zoom, and the ball is back in the
7 ZBA's court.

8 MR. HUGHES: All righty. I believe we're
9 on Draft Number 12.

10 JUDGE SLAVIN: Hey, Mike, you got a lot of
11 background noise there.

12 MR. PRATT: Yeah, I'm trying to get her
13 quiet. She's going to quit talking now.

14 MR. HUGHES: Okay. The motion being, The
15 Lee County ZBA finds that other than, perhaps,
16 during the repower construction, there would
17 be -- there would not be any odor associated
18 with the proposed repowered Big Sky Development.

19 JUDGE SLAVIN: Second?

20 MR. BOTHE: Second.

21 JUDGE SLAVIN: Hearing a second, the floor
22 is open for debate.

23 Your motion, Mr. Hughes. Anything?

24 MR. HUGHES: Nothing further.

1 JUDGE SLAVIN: Any other Board member want
2 to address it?

3 (No verbal response.)

4 JUDGE SLAVIN: Seeing no indication, I
5 will put the question. The question being put
6 is whether the Lee County ZBA finds that other
7 than, perhaps, during the repower construction,
8 there would not be any odor associated with the
9 proposed repowered Big Sky Development.

10 Adoption of the motion requires a vote by
11 the majority. The vote will be by voice. All
12 those in favor indicate by saying aye.

13 (All those simultaneously
14 responded.)

15 JUDGE SLAVIN: Opposed by nay.

16 (No verbal response.)

17 JUDGE SLAVIN: Motion is adopted.

18 Back at you, gentlemen.

19 Oops. There's that mouse again. Need a
20 cat. Got to add some humor to this.

21 Okay. Back at you. Somebody.

22 MR. BUHROW: Oh, you're ready? Okay.

23 Judge, Number 13. The Lee County ZBA
24 finds that, from the evidence, that the

1 electromagnetic field in the project would be --
2 would inherently come from the collection lines
3 and transformers, but, due to being buried or
4 having sufficient setbacks, there would be no
5 negative health impacts from the impacts of
6 electromagnetic fields in the proposed repower.

7 JUDGE SLAVIN: Mind if I take out the
8 second "impacts"? Take a look, see if that's
9 all right.

10 MR. BUHROW: Yes.

11 JUDGE SLAVIN: Make sure I got -- just a
12 minute. I have got to remind myself. So ignore
13 the red "impacts, no."

14 All right. Do I have a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Hearing a second, the floor
17 is open for debate.

18 Anything you want to say about your
19 motion, Mr. Buhrow?

20 MR. BUHROW: Nothing.

21 JUDGE SLAVIN: Any other Board member want
22 to address it?

23 (No verbal response.)

24 JUDGE SLAVIN: Seeing no indication, I

1 will put the question. The question being put
2 is whether the Lee County ZBA finds, from the
3 evidence, that electromagnetic fields in the
4 project would inherently come from collection
5 lines and transformers, but, due to being buried
6 or having sufficient setbacks, there would be no
7 negative health impacts from electromagnetic
8 fields in this proposed repower.

9 Adoption of the motion requires a vote by
10 the majority. The vote will be by voice. All
11 those in favor indicate by saying aye.

12 (All those simultaneously
13 responded.)

14 JUDGE SLAVIN: Opposed by nay.

15 (No verbal response.)

16 JUDGE SLAVIN: Motion is adopted. Okay.

17 MR. HUGHES: Okay. Moving on to Number
18 14. The Lee County ZBA finds that, other than,
19 perhaps, glare during construction, there would
20 be no heat or glare associated with this
21 proposed repowered development that would affect
22 adjoining properties, because a WECS does not
23 produce heat, and the Petitioner has promised in
24 its application that the WTGs would be painted a

1 nonreflective color -- excuse me, painted a
2 nonreflective and unobtrusive color, such as
3 gray or white -- put that in parentheses --
4 closed parentheses, and which will provide a
5 general uniformity.

6 JUDGE SLAVIN: Take a look there, my
7 friend, tell me if that looks right.

8 MR. HUGHES: No. Which would be painted a
9 nonreflective and unobtrusive color. Yes.

10 JUDGE SLAVIN: Okay. Do I hear a second?

11 MR. BOTHE: Second.

12 JUDGE SLAVIN: Hearing a second, the floor
13 is open for debate.

14 Anything you want to say about your own
15 motion, Mr. Hughes?

16 MR. HUGHES: Just kind of clarifying that
17 point, relative to their actual application, and
18 that specifically tying into the Code, addressed
19 the matter of painting an unobtrusive color,
20 specifically designated gray or white, and also
21 indicated the need for a general uniformity.

22 JUDGE SLAVIN: Okay. Any other Board
23 member want to address it?

24 (No verbal response.)

1 JUDGE SLAVIN: Seeing no indication, I
2 will put the question. The question being put
3 is whether the Lee County ZBA finds that, other
4 than perhaps during -- perhaps glare during
5 construction, there would be no heat or glare
6 associated with this proposed repowered
7 development that would affect adjoining
8 properties, because a WECS does not produce heat
9 and the Petitioner has promised, in its
10 application, that the WTGs would be painted a
11 nonreflective and unobtrusive color, such as
12 gray or white, and which will provide a general
13 uniformity.

14 Mind if I get rid of that "and" and put
15 the dash?

16 MR. HUGHES: Okay. That works. I just
17 wanted to show that it was a different point
18 than strictly the paint.

19 JUDGE SLAVIN: It's got so many "and"s.

20 MR. HUGHES: Yeah, okay.

21 JUDGE SLAVIN: Adoption of the vote
22 requires a voice by the majority. The vote will
23 be by voice. All those in favor indicate by
24 saying aye.

1 (All those simultaneously
2 responded.)

3 JUDGE SLAVIN: Opposed by nay.

4 (No verbal response.)

5 JUDGE SLAVIN: Motion is adopted. Okay.

6 MR. BUHROW: Moving on to 15. The Lee
7 County ZBA finds that there would be no
8 particularly-identifiable fire or explosion
9 hazards associated with this repowered
10 development.

11 JUDGE SLAVIN: Okay. Do I hear a second?

12 MR. BOTHE: Second.

13 JUDGE SLAVIN: I think he said any.

14 Your motion, Mr. Buhrow. Any --

15 MR. BUHROW: No, sir.

16 JUDGE SLAVIN: Okay. Any other Board
17 member want to address it?

18 (No verbal response.)

19 JUDGE SLAVIN: I will then put the
20 question. The question being put is whether the
21 Lee County ZBA finds that there would not be any
22 particularly-identifiable fire or explosion
23 hazards associated with this repowered
24 development.

1 Adoption of the motion requires a vote by
2 the majority. The vote will be by voice. All
3 those in favor indicate by saying aye.

4 (All those simultaneously
5 responded.)

6 JUDGE SLAVIN: Opposed by nay.

7 (No verbal response.)

8 JUDGE SLAVIN: That motion is adopted as
9 well.

10 Okay. The floor is open.

11 MR. HUGHES: Moving on to 16.

12 JUDGE SLAVIN: Okay.

13 MR. HUGHES: You're just trying to get
14 through this faster.

15 JUDGE SLAVIN: It's going slower because I
16 keep having to backtrack.

17 MR. HUGHES: The Lee County ZBA finds that
18 the Petitioner has promised to submit a copy of
19 the site plan to local fire protection
20 districts.

21 JUDGE SLAVIN: Second?

22 MR. BOTHE: Second.

23 JUDGE SLAVIN: Hearing a second, anything
24 you want to say about your own motion,

1 Mr. Hughes?

2 MR. HUGHES: Nothing further.

3 JUDGE SLAVIN: Any other Board member?

4 (No verbal response.)

5 JUDGE SLAVIN: I will then put the
6 question. The question being put is whether the
7 Lee County ZBA finds that the Petitioner has
8 promised to submit a copy of the site plan to
9 local fire protection districts.

10 Adoption of the motion requires a vote by
11 the majority. The vote will be by voice. All
12 those in favor indicate by saying aye.

13 (All those simultaneously
14 responded.)

15 JUDGE SLAVIN: Opposed by nay.

16 (No verbal response.)

17 JUDGE SLAVIN: Motion is, not
18 surprisingly, adopted.

19 Just a minute. Okay.

20 MR. BUHROW: Mr. Chairperson, Number 17.

21 The Lee County ZBA finds that the Petitioner
22 promised to properly remove all solid waste
23 related to the construction, operation, and
24 maintenance from the site of the proposed

1 repowered development.

2 JUDGE SLAVIN: All right. Do I hear a
3 second?

4 MR. BOTHE: Second.

5 JUDGE SLAVIN: Hearing a second, anything
6 you want to say about your own motion,
7 Mr. Buhrow?

8 MR. BUHROW: No.

9 JUDGE SLAVIN: Any other Board member want
10 to address it?

11 (No verbal response.)

12 JUDGE SLAVIN: Seeing no indication, I
13 will put the question. The question being put
14 is whether the Lee County ZBA finds that the
15 Petitioner promised to promptly remove all solid
16 waste related to the construction, operation,
17 and maintenance from the site of this proposed
18 repowered development.

19 Adoption of the motion requires a vote by
20 the majority. The vote will be by voice. All
21 those in favor indicate by saying aye.

22 (All those simultaneously
23 responded.)

24 JUDGE SLAVIN: Opposed by nay.

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(No verbal response.)

JUDGE SLAVIN: Motion is adopted.

MR. HUGHES: Okay. Actually, Your Honor, I think I'm going to skip over Drafts 18 and 19. I believe they are adequately addressed in other motions.

JUDGE SLAVIN: Fine.

MR. HUGHES: Everyone already?

JUDGE SLAVIN: Do what you want --

MR. HUGHES: I'll move on to 20. The Lee County ZBA finds that, based on the application and testimony heard, the Petitioner promised, in conformity with all applicable laws, to handle, store, transport, and dispose of all hazardous materials related to the construction, operation, and maintenance of this proposed repower project.

JUDGE SLAVIN: Do I hear a second?

MR. BOTHE: Second.

JUDGE SLAVIN: Anything you want to say about your motion, Mr. Hughes?

MR. HUGHES: No, sir.

JUDGE SLAVIN: Any other Board member?

(No verbal response.)

1 JUDGE SLAVIN: Hearing none, I will put
2 the question. The question being put is whether
3 the Lee County ZBA finds that, based on the
4 application and testimony heard, the Petitioner
5 promised, in conformity with all applicable
6 laws, to handle, store, transport, and dispose
7 of all hazardous materials related to the
8 construction, operation, and maintenance of this
9 proposed repower project.

10 Adoption of the motion requires a vote by
11 the majority. The vote will be by voice. All
12 those in favor indicate by saying aye.

13 (All those simultaneously
14 responded.)

15 JUDGE SLAVIN: Opposed by nay.

16 (No verbal response.)

17 JUDGE SLAVIN: Guess what? The motion is
18 adopted.

19 Okie dokie.

20 MR. HUGHES: Okay. Moving on to Draft
21 Number 21. The motion being, The Lee County ZBA
22 finds that the Petitioner's application complies
23 with the required basic application information
24 because it:

1 Shows the property lines of the proposed
2 site of construction;

3 Shows the location of the WECS;

4 Shows the location of all the structures
5 located on the proposed WECS site property --

6 JUDGE SLAVIN: Can you stop there just a
7 minute, just to catch up?

8 MR. HUGHES: Yes. I keep forgetting that
9 you're changing those to red.

10 JUDGE SLAVIN: That's all right. I
11 understand. Not your -- if I don't do it now
12 though, it will not translate tomorrow morning
13 very well.

14 Okay.

15 MR. HUGHES: We hadn't finished that.

16 JUDGE SLAVIN: Okay.

17 MR. HUGHES: So I'll start at, shows the
18 location of all of the structures located on the
19 proposed WECS site property, and describes those
20 structures.

21 JUDGE SLAVIN: Okay.

22 MR. HUGHES: Shows the location of all
23 aboveground utility lines within a radius of two
24 times the height of the proposed WTGs.

1 JUDGE SLAVIN: The reason -- and I want to
2 just bring this to your attention, just so you
3 know. Your Ordinance says WECS, and clearly
4 that's an error. It can't be that they want to
5 show the location of two times the height of a
6 WECS, because there is no height of a WECS. So
7 I didn't know how to handle it, so I wrote WTGs.

8 MR. HUGHES: That's -- I understood that.

9 JUDGE SLAVIN: Okay.

10 MR. HUGHES: Let's see, two times the
11 height of the WTGs;

12 Shows the location of all underground
13 utility lines on the proposed WECS property
14 site;

15 Contains a dimensional representation of
16 the structural components of the tower
17 construction, including the base and footings;

18 Shows a schematic of the electrical
19 systems associated with the proposed WECS;

20 Contains the manufacturer's
21 specifications, installation, and operation
22 instructions, or the proposed WECS design
23 information;

24 Does not contain a certification by a

1 registered professional engineer that the tower
2 design is sufficient to withstand wind load
3 requirements for structures defined by BOCA.
4 Prior to the issuance of the building permit --

5 JUDGE SLAVIN: Is that a new sentence?

6 MR. HUGHES: I'm trying to decide whether
7 to put it as a new sentence or -- yes, let's
8 just put it as a new sentence.

9 Prior to the issuance of a building
10 permit, the Petitioner shall provide such
11 certification to the Lee County Zoning
12 Administrator.

13 JUDGE SLAVIN: Blank, just blanked out.
14 Shall?

15 MR. HUGHES: Oh. Provide such
16 certification to the Lee County Zoning
17 Administrator

18 JUDGE SLAVIN: Do you mind -- just take a
19 look. I'm thinking about putting this in the
20 Recommendations sentence -- or section. I mean,
21 you can --

22 MR. HUGHES: The only reason I added it on
23 there was because in the application they did
24 say that they would be -- the Ordinance only

1 requires it prior to the building permit, and it
2 does say in the application that they would be
3 getting that -- would be getting that
4 certification.

5 JUDGE SLAVIN: Can we put -- without
6 telling you what to do, the Petitioner provided
7 it would provide such certification before.

8 MR. HUGHES: Sure.

9 JUDGE SLAVIN: How is that?

10 MR. HUGHES: Yeah. You're going to have
11 to remove --

12 JUDGE SLAVIN: Oh.

13 MR. HUGHES: Yeah, you're going to remove
14 "prior to the issuance of a building permit."

15 JUDGE SLAVIN: Yup, yup, yup. Well, or at
16 the end.

17 MR. HUGHES: I think.

18 JUDGE SLAVIN: You tell me.

19 MR. HUGHES: Why don't you --

20 JUDGE SLAVIN: How about if I just make
21 it, The Petitioner promised?

22 MR. HUGHES: Why don't you remove "prior
23 to the issuance of the building permit," the
24 first section.

1 JUDGE SLAVIN: Okay.

2 MR. HUGHES: And let's -- to tie this in
3 to that, instead of starting with -- let's put,
4 However, the Petitioner promised.

5 JUDGE SLAVIN: Okay. Got it. Yup, that's
6 a good tie.

7 Okay. Take a look.

8 MR. HUGHES: And I would say -- I don't
9 know whether to use "could" or "would" be
10 issued.

11 JUDGE SLAVIN: Now?

12 MR. HUGHES: That appears appropriate to
13 me.

14 JUDGE SLAVIN: Do I hear a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Hearing a second, the floor
17 is open for debate.

18 Mr. Hughes?

19 MR. HUGHES: Only as we have talked in
20 the -- as we have tried to evolve that sentence,
21 felt that was appropriate in lieu of the way
22 it's stated within the application and the
23 Ordinance.

24 JUDGE SLAVIN: Okay. Any other Board

1 member, address it?

2 (No verbal response.)

3 JUDGE SLAVIN: Hearing no indication of a
4 want to do so, I'm going to put the question.
5 The question being put -- I wasn't going to read
6 this, but we have made enough changes -- is
7 whether the Lee County ZBA finds that the
8 Petitioner's application complies with the
9 required basic application information because
10 it:

11 Shows the property lines of the proposed
12 site of construction;

13 Shows the location of WECS;

14 Shows the location of all of the
15 structures located on the proposed WECS site
16 property and describes those structures;

17 Shows the location of all aboveground
18 utility lines within a radius of two times the
19 height of the proposed WTGs;

20 Shows the location of all underground
21 utility lines on the proposed WECS property
22 site;

23 Contains a dimensional representation of
24 the structural components of the tower

1 construction, including the footings --

2 MR. HUGHES: Base and footings.

3 JUDGE SLAVIN: -- including the base and
4 footings;

5 Shows a schematic of the electrical system
6 associated with the proposed WECS;

7 Contains the manufacturer's
8 specifications, installation, and operation
9 instructions, or the proposed WECS design
10 information;

11 Does not contain a certification by a
12 registered professional engineer that the tower
13 design is sufficient to withstand wind load
14 requirements for structures defined by BOCA;

15 However, the Petitioner promised to
16 provide such certification before it would be
17 issued a building permit.

18 Adoption of this motion requires a vote by
19 the majority. The vote will be by voice. All
20 those in favor indicate by saying aye.

21 (All those simultaneously
22 responded.)

23 JUDGE SLAVIN: All those opposed by nay.

24 (No verbal response.)

1 JUDGE SLAVIN: Motion is adopted.

2 Okay. Back at it.

3 MR. BUHROW: Going to Number 22, Judge.

4 JUDGE SLAVIN: Yup.

5 MR. BUHROW: The Lee County ZBA finds that
6 the blades on the proposed WTGs will be at least
7 15 feet from the ground to their lowest arch
8 point because, in the testimony it produced the
9 blade tips will be actually 75 feet above ground
10 level.

11 I inserted the words "will be actually."

12 JUDGE SLAVIN: Yup.

13 MR. BUHROW: Will actually be 75.

14 JUDGE SLAVIN: Yup, thank you.

15 Does that look right now, Mr. Buhrow?

16 MR. BUHROW: Yes.

17 JUDGE SLAVIN: Okay. Do I hear a second?

18 MR. BOTHE: Second.

19 JUDGE SLAVIN: Hearing a second, debate.

20 Mr. Buhrow, anything you want to say?

21 MR. BUHROW: No, sir.

22 JUDGE SLAVIN: Any other Board member?

23 (No verbal response.)

24 JUDGE SLAVIN: Seeing no indication, I put

1 the question. The question being put is whether
2 the Lee County finds that the blades on the
3 proposed WTGs will be at least 15 feet from the
4 ground to their lowest arch point because, in
5 the testimony it produced the blade tops will
6 actually be 75 feet above ground level.

7 Adoption of the motion requires a vote by
8 the majority. The vote will be by voice. All
9 those in favor indicate by saying aye.

10 (All those simultaneously
11 responded.)

12 JUDGE SLAVIN: Opposed by nay.

13 (No verbal response.)

14 JUDGE SLAVIN: Motion is adopted.

15 Okay. Floor is wide open.

16 MR. HUGHES: Moving on to Draft Number 23.
17 The Lee County ZBA cannot find that the
18 Petitioner has promised in its application, but
19 did so --

20 JUDGE SLAVIN: Just a minute. Let me
21 catch up to you. Yup.

22 MR. HUGHES: In the testimony heard.

23 JUDGE SLAVIN: That's what I get for not
24 reading ahead.

1 MR. HUGHES: That access to the proposed
2 towers would be controlled by 6-foot fences and
3 anti-climbing devices with appropriate warning
4 signage.

5 JUDGE SLAVIN: Do I hear a second?

6 MR. BOTHE: Second.

7 JUDGE SLAVIN: Hearing a second, the floor
8 is open for debate.

9 Mr. Hughes?

10 MR. HUGHES: Only, in changing some of
11 that structure, because I could not find it in
12 the application but do remember, I believe it
13 was Mr. Kutey, mentioning that in his testimony.

14 JUDGE SLAVIN: Okay. Any other Board
15 member want to address it?

16 MR. PRATT: He mentioned -- Glen, he
17 mentioned 6-foot fences.

18 MR. HUGHES: I don't know that he
19 mentioned specifically 6-foot fences. He
20 mentioned the existing fences.

21 MR. PRATT: So I guess what I'm getting at
22 is, in this motion you're not requiring them to
23 put 6-foot fences.

24 MR. HUGHES: That's probably -- that's

1 probably a good point. Yeah, there's no -- I'm
2 not making any requirement. My assumption was
3 that was the case. Maybe I have heard that
4 referenced too many times, because I can't
5 remember that he specifically -- that Mr. Kutey
6 specifically mentioned 6-foot fences. He was
7 mentioning the current security that was in
8 place and the anti-climbing, so.

9 MR. PRATT: Right.

10 MR. HUGHES: So maybe we should just --
11 controlled by fences and anti-climbing.

12 MR. PRATT: That would work for me, yes.

13 MR. HUGHES: Okay. Then I'll amend that.

14 JUDGE SLAVIN: That's fine. Take a look
15 though.

16 Just a minute. The red -- just a minute.
17 I know there's a way to cross out. I can't find
18 it right at the moment. I know what that means.

19 MR. HUGHES: If you're good with that.

20 JUDGE SLAVIN: I'm good with it. I'm good
21 to regurgitate that.

22 Any other Board member want to address it?

23 MR. HUGHES: As long as that doesn't refer
24 to no fences then.

1 JUDGE SLAVIN: Any other Board member want
2 to address this?

3 (No verbal response.)

4 JUDGE SLAVIN: Seeing no indication, I'll
5 put the question. The question being put is
6 whether the Lee County ZBA cannot find that the
7 Petitioner has promised in its application, but
8 did so in the testimony heard, that access to
9 the proposed towers would be controlled by
10 fences and anti-climbing devices with
11 appropriate warning signage.

12 Adoption of the motion requires a vote by
13 the majority. The vote will be by voice. All
14 those in favor indicate by saying aye.

15 (All those simultaneously
16 responded.)

17 JUDGE SLAVIN: All opposed by nay.

18 (No verbal response.)

19 JUDGE SLAVIN: Motion is adopted.

20 Here's the cross-out. Okay. I just saw
21 it.

22 All right.

23 MR. BUHROW: Number 24. Reads, The Lee
24 County ZBA finds that the proposed WECS would be

1 interconnected to a utility system and the
2 Petitioner made a showing that the proposed
3 repowered WECS would meet the utility's
4 interconnection requirements as it is presently
5 being utilized.

6 JUDGE SLAVIN: Okay. Do I hear a second?

7 MR. BOTHE: Second.

8 JUDGE SLAVIN: Hearing a second, the floor
9 is open for debate.

10 Anything you want to say about your
11 motion, Mr. Buhrow?

12 MR. BUHROW: No.

13 JUDGE SLAVIN: Any other Board member?

14 (No verbal response.)

15 JUDGE SLAVIN: Seeing none, I will put the
16 question. The question being put is whether the
17 Lee County ZBA finds that the proposed WECS
18 would be interconnected to a utility system, and
19 the Petitioner made a showing that the proposed
20 repowered WECS would meet the utility's
21 interconnection requirements as it is presently
22 being utilized.

23 Adoption of the motion requires a vote by
24 the majority. The vote will be by voice. All

1 those in favor indicate by saying aye.

2 (All those simultaneously
3 responded.)

4 JUDGE SLAVIN: Opposed by nay.

5 (No verbal response.)

6 JUDGE SLAVIN: Motion is adopted.

7 Onward and upward.

8 MR. HUGHES: To 25. The Lee County ZBA
9 finds that there is no proposed WTG construction
10 within 350 feet of a dedicated roadway, railroad
11 right-of-way, or a right-of-way for an overhead
12 transmission or distribution line.

13 JUDGE SLAVIN: Okay. Do I hear a second?

14 MR. BOTHE: Second.

15 JUDGE SLAVIN: Hearing a second, the floor
16 is open for debate.

17 Anything you want to say about your own
18 motion, Mr. Hughes?

19 MR. HUGHES: Nothing further.

20 JUDGE SLAVIN: Any other Board member want
21 to address it?

22 (No verbal response.)

23 JUDGE SLAVIN: Hearing nothing, I will put
24 the question. The question being put is whether

1 the Lee County ZBA finds that there is no --
2 whoever did this put a lot of alternatives in
3 here this time -- is no proposed WTG
4 construction within 30 feet of a dedicated
5 roadway, railroad right-of-way, or right-of-way
6 for an overhead transmission or distribution
7 line.

8 Adoption of the motion requires a vote by
9 the majority. The vote will be by voice. All
10 those in favor indicate by saying aye.

11 (All those simultaneously
12 responded.)

13 JUDGE SLAVIN: Opposed by nay.

14 (No verbal response.)

15 JUDGE SLAVIN: Motion is adopted.

16 Okay. I'm caught up.

17 MR. BUHROW: On 26. The Lee County ZBA
18 finds there are 10 WTGs proposed within 350 feet
19 of participating landowners' property lines, and
20 Petitioner has obtained 11 setback waivers for
21 those Variances.

22 JUDGE SLAVIN: Do I hear a second?

23 MR. BOTHE: Second.

24 JUDGE SLAVIN: Any debate? Mr. Buhrow,

1 your motion.

2 MR. BUHROW: Glen, did we talk about this
3 one beforehand with the setback waivers? I'm
4 just trying to remember that.

5 MR. HUGHES: Yeah. I'm trying to remember
6 whether they have actually got them or said they
7 would, but they're all participating property
8 owners, so I believe that would be the case
9 anyways.

10 MR. BUHROW: Okay.

11 MR. HUGHES: And the other thing I would
12 do is probably more of a scrivener's adjustment,
13 finds that there are 10 WTGs.

14 MR. BUHROW: Yeah, are 10.

15 JUDGE SLAVIN: Ah, absolutely.

16 MR. HUGHES: There are 10, and then
17 eliminate --

18 JUDGE SLAVIN: I hope I'll know what this
19 means tomorrow morning.

20 Okay. Forgot where we were. Is that the
21 motion?

22 MR. BUHROW: That's all.

23 JUDGE SLAVIN: Okay. And you addressed
24 it.

1 Any other Board member want to address it?

2 (No verbal response.)

3 JUDGE SLAVIN: Seeing no indication of a
4 want to do so, I will put the question. The
5 question being put is whether the Lee County ZBA
6 finds that there are 10 WTGs within 350 feet of
7 participating landowners' property lines, and
8 Petitioner has obtained 11 setback waivers for
9 those Variances.

10 Adoption of this motion requires a vote by
11 the majority. The vote will be by voice. All
12 those in favor indicate by saying aye.

13 (All those simultaneously
14 responded.)

15 JUDGE SLAVIN: Opposed by nay.

16 (No verbal response.)

17 JUDGE SLAVIN: The motion is a winner.
18 Okay.

19 MR. HUGHES: Moving on to Number 27. The
20 Lee County ZBA finds that the Petitioner has
21 indicated --

22 JUDGE SLAVIN: Wait a minute. I can tell
23 there's a change here in the offering. Find
24 that. Okay.

1 MR. HUGHES: The Petitioner has indicated
2 that during all operations, any noise and
3 vibration from the proposed repower project
4 would conform to the requirements of the
5 Illinois Pollution Control Board.

6 JUDGE SLAVIN: See if that looks right.

7 MR. HUGHES: Yes, that's --

8 JUDGE SLAVIN: Do I hear a second?

9 MR. BOTHE: Second.

10 JUDGE SLAVIN: Hearing a second, the floor
11 is open for debate.

12 Anything you want to say about your
13 motion, Mr. Hughes?

14 MR. HUGHES: No.

15 JUDGE SLAVIN: Any other Board member want
16 to address it?

17 (No verbal response.)

18 JUDGE SLAVIN: Seeing no indication, I
19 will put the question. The question being put
20 is whether the ZBA finds that the Petitioner
21 indicated that during all operations, any noise
22 and vibrations from proposed -- from the --
23 that's just a scrivener's error -- the proposed
24 repower project would conform to the

1 requirements of the Illinois Pollution Control
2 Board (IPCB).

3 Adoption of the motion requires a vote by
4 the majority. The vote will be by voice. All
5 those in favor indicate by saying aye.

6 (All those simultaneously
7 responded.)

8 JUDGE SLAVIN: Opposed by nay.

9 The motion is adopted. Okay.

10 MR. BUHROW: Moving on to 28.

11 JUDGE SLAVIN: Just a minute. I have got
12 to get there. I jumped -- Mrs. Duffy jumped to
13 30. All right.

14 MR. BUHROW: How did she do that?

15 Number 28.

16 JUDGE SLAVIN: She's taking control of the
17 mouse.

18 MR. BUHROW: Oh.

19 The Lee County ZBA finds that the Lee
20 County residences within the footprint of the
21 proposed repower project, 12 participating
22 residences would receive IPCB noise level
23 exceedances and three nonparticipating
24 residences would receive those exceedances.

1 JUDGE SLAVIN: Okay. I think that looks
2 right. How about you?

3 MR. BUHROW: Yes.

4 JUDGE SLAVIN: Okay. Do I hear a second?

5 MR. BOTHE: Second.

6 JUDGE SLAVIN: Hearing a second, the floor
7 is open for debate.

8 Anything you want to say about your own
9 motion, Mr. Buhrow?

10 MR. BUHROW: No, sir.

11 JUDGE SLAVIN: Any other Board member want
12 to address it?

13 (No verbal response.)

14 JUDGE SLAVIN: Seeing no indication, I
15 will put the question. The question being put
16 is whether the Lee County ZBA finds that, of the
17 Lee County residences within the footprint of
18 the proposed repower project, 12 participating
19 residences would receive IPCB noise level
20 exceedances, and three nonparticipating
21 residences would receive those exceedances.

22 Adoption of the motion requires a vote by
23 the majority. The vote will be by voice. All
24 those in favor indicate by saying aye.

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(All those simultaneously
responded.)

JUDGE SLAVIN: And those opposed by nay.

(No verbal response.)

JUDGE SLAVIN: Motion is adopted.

MR. HUGHES: Moving on to Number 29. The Lee County ZBA finds that the repowered WTGs could result in a decrease of noise levels from the presently-existing at some property lines because of the reduction in the total number of turbines and because of technology of the new 2.7 models.

JUDGE SLAVIN: While I'm fooling around here, take a look.

MR. HUGHES: That appears fine.

JUDGE SLAVIN: Do I hear a second?

MR. BOTHE: Second.

JUDGE SLAVIN: Hearing a second, the floor is open for debate.

Anything you want to say, Mr. Hughes?

MR. HUGHES: Nothing further.

JUDGE SLAVIN: Any other Board member want to address it?

(No verbal response.)

1 JUDGE SLAVIN: Hearing nothing, I will put
2 the question. The question being put is whether
3 the Lee County ZBA finds -- I can't remember
4 what this said -- I am sorry, gentlemen. Give
5 me a minute -- and Ladies.

6 That the repowered WTGs could result in a
7 decrease of noise levels from that presently
8 existing at some property lines because of the
9 reduction in the total number of turbines and
10 because of technology -- because of the
11 technology -- no -- of technology of the new 2.7
12 models.

13 Adoption of the motion requires a vote by
14 the majority. The vote will be by voice. All
15 those in favor indicate by saying aye.

16 (All those simultaneously
17 responded.)

18 JUDGE SLAVIN: Opposed by nay.

19 (No verbal response.)

20 JUDGE SLAVIN: Motion is adopted. Okay.

21 MR. BUHROW: Judge, on Number 30.

22 JUDGE SLAVIN: Yes, sir.

23 MR. BUHROW: The Lee County ZBA finds that
24 the Petitioner has proposed that the

1 Petitioner's proposed setbacks do not totally
2 mitigate the effect of noise to the people and
3 animals subjected to it for some proposed
4 turbine locations.

5 Do not totally mitigate the effect of
6 noise.

7 JUDGE SLAVIN: Take a look.

8 MR. BUHROW: Yeah, I think so.

9 JUDGE SLAVIN: Is that right?

10 MR. BUHROW: Yes.

11 JUDGE SLAVIN: Okay.

12 MR. BUHROW: Yes.

13 JUDGE SLAVIN: Do I hear a second?

14 MR. BOTHE: Second.

15 JUDGE SLAVIN: Hearing a second, the floor
16 is open for debate.

17 Anything you want to say about your
18 motion, Mr. Buhrow?

19 MR. BUHROW: No.

20 JUDGE SLAVIN: Okay. Any other Board
21 member want to address it?

22 MR. HUGHES: Yes. I understand what he's
23 doing with the "do not totally mitigate," and we
24 have got -- I guess my thought was, on that --

1 and I'm just throwing this out. I'm not
2 proposing an amendment at this point, because
3 I'm kind of thinking through this.

4 "Setbacks and other efforts should
5 sufficiently mitigate" would be more the
6 phrasing that I would like to use on that.
7 However, the next motion may clarify that
8 sufficiently that it may not matter.

9 JUDGE SLAVIN: Any other Board member?

10 (No verbal response.)

11 JUDGE SLAVIN: Seeing no indication of a
12 want to do so, I will put the question. The
13 question being put is whether the Lee County ZBA
14 finds that the Petitioner's proposed setbacks do
15 not totally mitigate the effect of noise to
16 people and animals subjected to it for some
17 proposed turbine locations.

18 Adoption of the motion requires a vote by
19 the majority. The vote will be by voice. All
20 those in favor indicate by saying aye.

21 (All those simultaneously
22 responded.)

23 JUDGE SLAVIN: Opposed by nay.

24 (No verbal response.)

1 JUDGE SLAVIN: Motion is adopted.

2 Okay. Floor is open.

3 MR. HUGHES: Moving on to the motion for
4 31. The Lee County ZBA finds that the
5 Petitioner has promised to mitigate any
6 residential noise level exceedances in one of
7 the following ways:

8 Waivers; or

9 Substitution of lower-noise blades; or

10 De-rating the offending WTG from its peak
11 output.

12 JUDGE SLAVIN: Do I hear a second?

13 MR. BOTHE: Second.

14 JUDGE SLAVIN: Hearing a second, the floor
15 is open for debate.

16 Your motion, Mr. Hughes.

17 MR. HUGHES: No, I think that's -- it
18 probably just relates to the clarification that
19 I was looking for on 30 and didn't know whether
20 I should fit it there or here.

21 JUDGE SLAVIN: Okay. Any other Board
22 member, comment?

23 MR. PRATT: Judge, I do. And I think this
24 may be just personal, but I don't like the word

1 "promised." I like the word "agreed." Because
2 earlier we stated that they agreed to do
3 everything they said under oath and in
4 testimony. So here they also agreed to do this.
5 They didn't promise to do it, they agreed to do
6 it.

7 MR. HUGHES: I have no problem with that
8 change in wording.

9 JUDGE SLAVIN: I'm not going to go through
10 motions to amend.

11 MR. HUGHES: We'll call it a scrivener's.

12 JUDGE SLAVIN: It was your motion, right?

13 MR. HUGHES: Yes.

14 JUDGE SLAVIN: Friendly amendment
15 accepted.

16 Okay. Does that look right now,
17 Mr. Hughes?

18 MR. HUGHES: That's fine.

19 JUDGE SLAVIN: Any other Board member --
20 anything else, Mr. Pratt, or any other Board
21 member?

22 MR. PRATT: No.

23 JUDGE SLAVIN: Seeing no indication, I
24 will put the question. The question being put

1 is whether the Lee County ZBA finds that the
2 Petitioner has agreed to mitigate any
3 residential noise level exceedances in one of
4 the following ways:

5 Waivers; or

6 Substitution of lower-noise blades; or

7 De-rating the offending WTG from its peak
8 output.

9 Adoption of the motion requires a vote by
10 the majority. The vote will be by voice. All
11 those in favor indicate by saying aye.

12 (All those simultaneously
13 responded.)

14 JUDGE SLAVIN: Opposed by nay.

15 (No verbal response.)

16 JUDGE SLAVIN: Motion is adopted. Okay.

17 MR. BUHROW: Number 32.

18 JUDGE SLAVIN: 32, got it.

19 MR. BUHROW: The Lee County ZBA finds that
20 the Petitioner has committed to a post-
21 construction expert noise study.

22 JUDGE SLAVIN: Do I hear a second?

23 MR. BOTHE: Second.

24 JUDGE SLAVIN: Hearing a second, the floor

1 is open for debate.

2 Anything you want to say about that simple
3 motion, Mr. Buhrow?

4 MR. BUHROW: No.

5 JUDGE SLAVIN: Any other Board member?

6 (No verbal response.)

7 JUDGE SLAVIN: Hearing none, I will put
8 the question. The question being put is whether
9 the Lee County ZBA finds that the Petitioner has
10 committed to a post-construction expert noise
11 study.

12 Adoption of the motion requires a vote by
13 the majority. The vote will be by voice. All
14 those in favor indicate by saying aye.

15 (All those simultaneously
16 responded.)

17 JUDGE SLAVIN: Opposed by nay.

18 (No verbal response.)

19 JUDGE SLAVIN: Motion is unanimously
20 adopted. Okay.

21 MR. HUGHES: 33. The motion being, The
22 Lee County ZBA finds that the Petitioner has
23 committed to an acceptable noise complaint
24 resolution protocol for this repowering project.

1 JUDGE SLAVIN: All right. Do I hear a
2 second?

3 MR. BOTHE: Second.

4 JUDGE SLAVIN: Hearing a second, debate.
5 Courtesy to you first, Mr. Hughes.

6 MR. HUGHES: Nothing additional.

7 JUDGE SLAVIN: Any other Board member?

8 (No verbal response.)

9 JUDGE SLAVIN: Seeing none, I will put the
10 question. The question being put is whether the
11 Lee County ZBA finds that the Petitioner has
12 committed to an acceptable noise complaint
13 resolution protocol for this repowering project.

14 Adoption of the motion requires a vote by
15 the majority. The vote will be by voice. All
16 those in favor indicate by saying aye.

17 (All those simultaneously
18 responded.)

19 JUDGE SLAVIN: Opposed by nay.

20 (No verbal response.)

21 JUDGE SLAVIN: This motion is adopted as
22 well. Okay.

23 MR. BUHROW: Number 34. The Lee County
24 ZBA finds that the Petitioner has made a

1 sufficient showing that the proposed WECS would
2 be installed or operate in compliance with the
3 Federal Aviation Administration (FAA)
4 regulations and Lee County Ordinance 10-15-13.

5 JUDGE SLAVIN: Second?

6 MR. BOTHE: Second.

7 JUDGE SLAVIN: Hearing a second, the floor
8 is open for debate.

9 Your motion, Mr. Buhrow. Anything you
10 want to say about it?

11 MR. BUHROW: Nothing.

12 JUDGE SLAVIN: Any other Board member want
13 to address it?

14 MR. HUGHES: Yeah, I have -- like
15 Mr. Pratt, like the previous ones, in terms of
16 the wording, I guess "showing" I'm not
17 comfortable with. I would prefer maybe the word
18 "assurance." They didn't really show us
19 anything. There was no diagrammatic
20 information -- well, "sufficient" is good. I'm
21 just saying, change "showing" to "assurance."

22 JUDGE SLAVIN: I'm just trying it out here
23 before.

24 MR. HUGHES: All right.

1 JUDGE SLAVIN: Mr. Pratt -- or, no,
2 Mr. Buhrow, how do you feel about that?

3 MR. BUHROW: That's satisfactory.

4 MR. HUGHES: Although it's misspelled.

5 JUDGE SLAVIN: You mean, unlike some other
6 languages, we put consonants together?

7 How about that, Mr. Buhrow?

8 MR. BUHROW: Okay.

9 JUDGE SLAVIN: Do I hear a second?

10 MR. BOTHE: Second.

11 JUDGE SLAVIN: I heard a second.

12 Any other debate besides Mr. Hughes?

13 (No verbal response.)

14 JUDGE SLAVIN: Seeing no indication, I
15 will put the question. The question being put
16 is whether the Lee County ZBA finds that the
17 Petitioner has made a sufficient assurance that
18 the proposed WECS would be installed or operated
19 in compliance with the Federal Aviation
20 Administration (FAA) regulations and Lee County
21 Ordinance Section 10-15-13.

22 Adoption of the motion requires a vote by
23 the majority. The vote will be by voice. All
24 those in favor indicate by saying aye.

1 (All those simultaneously
2 responded.)

3 JUDGE SLAVIN: Opposed by nay.

4 (No verbal response.)

5 JUDGE SLAVIN: Motion is adopted.

6 Yes, sir.

7 MR. HUGHES: Moving on to Number 35. The
8 Lee County ZBA finds that, in its application
9 and through testimony it produced, Petitioner
10 has stated that all of the electrical
11 distribution lines for this proposed repower
12 would be located underground.

13 JUDGE SLAVIN: Okay. Do I hear a second?

14 MR. BOTHE: Second.

15 JUDGE SLAVIN: Hearing a second, the floor
16 is open to debate.

17 Courtesy to you, Mr. Hughes.

18 MR. HUGHES: Nothing additional.

19 JUDGE SLAVIN: Any other Board member?

20 (No verbal response.)

21 JUDGE SLAVIN: Seeing none, I will put the
22 question. The question being put is whether the
23 Lee County ZBA finds that -- excuse me. If you
24 don't mind, I'll take out that "the."

1 That in its application and through the
2 testimony it produced, Petitioner has stated
3 that all of the electrical distribution lines
4 for this proposed repower would be located
5 underground.

6 Adoption of this motion requires a vote by
7 the majority. The vote will be by voice. All
8 those in favor indicate by saying aye.

9 (All those simultaneously
10 responded.)

11 JUDGE SLAVIN: Opposed by nay.

12 MR. HUGHES: I had taken the "the" out
13 when I read it.

14 JUDGE SLAVIN: Yeah, I bet you did.

15 MR. HUGHES: But I missed that you hadn't.

16 JUDGE SLAVIN: Okay. I think we're caught
17 up now.

18 MR. BUHROW: Judge, Number 36. The Lee
19 County ZBA finds that the WTGs within the
20 proposed repowered development would be designed
21 with an automatic overspeed control to render
22 the system inoperable when winds are blowing in
23 excess of the speeds for which the machine is
24 designed or in the event of a loss of utility

1 power preventing it from supplying power to a
2 de-energized distribution system.

3 The WTGs within the proposed repowered
4 development would have a mechanically operated
5 method to render the system inoperable.

6 I used the word "mechanically" instead of
7 "manually."

8 JUDGE SLAVIN: Yup, got it. I caught it.

9 MR. BUHROW: That's the way it was stated
10 in our manual.

11 JUDGE SLAVIN: Okay. Does that look like
12 your motion, Mr. Buhrow?

13 MR. BUHROW: Yes.

14 JUDGE SLAVIN: Do I hear a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Hearing a second, I will
17 open the floor for debate.

18 Courtesy to you first, Mr. Buhrow.

19 MR. BUHROW: Nothing else.

20 JUDGE SLAVIN: Any other Board member?

21 (No verbal response.)

22 JUDGE SLAVIN: Hearing none, I will put
23 the question. The question being put is whether
24 the Lee County ZBA finds that the WTGs within

1 the proposed repowered development would be
2 designed with an automatic overspeed control to
3 render the system inoperable when winds are
4 blowing in excess of the speeds for which the
5 machine is designed, or in the event of a loss
6 of utility power preventing it from supplying
7 power to a de-energized distribution system; and

8 The WTGs within the proposed repowered
9 development would have a mechanically operated
10 method to render the system inoperable.

11 Adoption of the motion requires a vote by
12 the majority. The vote will be by voice. All
13 those in favor indicate by saying aye.

14 (All those simultaneously
15 responded.)

16 JUDGE SLAVIN: Opposed by nay.

17 (No verbal response.)

18 JUDGE SLAVIN: Motion is adopted.

19 Getting close to the witching hour, but
20 we're not there yet.

21 MR. HUGHES: Moving on to Draft 37. The
22 Lee County ZBA finds that the shadow flicker
23 study performed for the project used --

24 JUDGE SLAVIN: Just a minute. I'm sorry.

1 MR. HUGHES: Yup.

2 JUDGE SLAVIN: I'm getting just a little
3 slow on the -- okay.

4 MR. HUGHES: A conservative modeling
5 approach with project site-specific conditions.
6 For example, the study modeled each receptor as
7 a greenhouse, meaning each receptor was modeled
8 as having windows on all sides, and effectively
9 created a model house susceptible to flicker
10 effects in all directions. Further, the project
11 site was modeled as if no obstacles were
12 present, including trees or buildings, which
13 would significantly reduce or eliminate the
14 duration and/or intensity of the shadow flicker
15 at a receptor. Due to the conservative approach
16 of the study, the actual duration and intensity
17 of shadow flicker at each receptor may be
18 expected to be less than those reported in the
19 study.

20 JUDGE SLAVIN: Do I hear a second?

21 MR. BOTHE: Second.

22 JUDGE SLAVIN: Hearing a second, the floor
23 is open for debate.

24 Anything you want to say about your own

1 motion, Mr. Hughes?

2 MR. HUGHES: No, I don't believe so.

3 JUDGE SLAVIN: Any other Board member want
4 to address it?

5 (No verbal response.)

6 JUDGE SLAVIN: Seeing no indication, I
7 will put the question. The question being put
8 is whether the Lee County ZBA finds that the
9 shadow flicker study performed for the project
10 used a conservative modeling approach with the
11 project site-specific conditions. For example,
12 the study modeled each receptor as a greenhouse,
13 meaning each receptor was modeled as having
14 windows on all sides, and effectively created a
15 model home susceptible to flicker effects in all
16 directions. Further, the project site was
17 modeled as if no obstacles were present,
18 including trees or buildings, which would
19 significantly reduce or eliminate the duration
20 and/or intensity of the shadow flicker at a
21 receptor. Due to the conservative approach of
22 the study, the actual duration and intensity of
23 shadow flicker at each receptor may be expected
24 to be less than those reported in the study.

1 Adoption of the motion requires a vote by
2 the majority. The vote will be by voice. All
3 those in favor indicate by saying aye.

4 (All those simultaneously
5 responded.)

6 JUDGE SLAVIN: Opposed by nay.

7 (No verbal response.)

8 JUDGE SLAVIN: Motion is adopted.

9 My OCD demands that we get to 40, or at
10 least try. Keep going.

11 MR. BUHROW: Ready for 38?

12 JUDGE SLAVIN: Yup.

13 MR. BUHROW: The Lee County Zoning Board
14 of Appeals finds that, based on the modeling
15 evidence provided, there will be no shadow
16 flicker on 20 of the 84 known occupied
17 residences within Lee County's portion of the
18 development, less than the industry standard
19 limitation of 30 annual hours on another 48, and
20 more than 30 yearly hours of shadow flicker on
21 16.

22 JUDGE SLAVIN: Do I hear a second?

23 MR. BOTHE: Second.

24 JUDGE SLAVIN: Hearing a second, the floor

1 is open for debate.

2 Courtesy to you, Mr. Buhrow.

3 MR. BUHROW: No. Everything is fine
4 there, I think.

5 JUDGE SLAVIN: Any other Board member?

6 (No verbal response.)

7 JUDGE SLAVIN: Seeing none, hearing none,
8 I will put the question. The question being put
9 is whether the Lee County Zoning Board of
10 Appeals finds that, based on the modeling
11 evidence provided, there will be no shadow
12 flicker on 20 of the 84 known occupied
13 residences within Lee County's portion of the
14 development, less than the industry standards
15 limitation of 30 annual hours on another 48, and
16 more than 30 yearly hours of shadow flicker on
17 16.

18 Adoption of the motion requires a vote by
19 the majority. The vote will be by voice. All
20 those in favor indicate by saying aye.

21 (All those simultaneously
22 responded.)

23 JUDGE SLAVIN: Opposed by nay.

24 (No verbal response.)

1 JUDGE SLAVIN: That motion is adopted as
2 well.

3 Two more and we can go home to your wives,
4 girlfriends, husbands.

5 MR. HUGHES: Moving on to Number 39. I
6 could drag this out and talk very slowly.

7 JUDGE SLAVIN: Good one.

8 MR. HUGHES: However, motion being, The
9 Lee County ZBA finds that the petition states
10 that -- the Petitioner states that they will
11 contract a third-party qualified professional to
12 be approved by the Lee County Zoning Enforcement
13 Officer to perform a post-construction shadow
14 flicker analysis of the operating WTGs of the
15 project.

16 JUDGE SLAVIN: Other than changing "finds"
17 and "the Petitioner," I think I got it.

18 Do I hear a second?

19 MR. BOTHE: Second.

20 JUDGE SLAVIN: Hearing a second, the floor
21 is open for debate.

22 Anything you want to say about your own
23 motion, Mr. Hughes?

24 MR. HUGHES: No.

1 JUDGE SLAVIN: We're all turning into
2 comedians.

3 All right. Adoption of -- any other Board
4 member?

5 (No verbal response.)

6 JUDGE SLAVIN: Hearing none, seeing none,
7 I put the question. The question being put is
8 whether the Lee County ZBA finds that the
9 Petitioner states that they will contact a
10 third-party qualified professional to be
11 approved by the Lee County Zoning Enforcement
12 Officer to perform a post-construction shadow
13 flicker analysis of the operating WTGs of the
14 project.

15 Adoption of the motion requires a vote by
16 the majority. The vote will be by voice. All
17 those in favor indicate by saying aye.

18 (All those simultaneously
19 responded.)

20 JUDGE SLAVIN: Opposed by nay.

21 (No verbal response.)

22 JUDGE SLAVIN: Motion is adopted.

23 One more. One more.

24 MR. BUHROW: All right. I have to turn

1 the page over.

2 Number 40. The Lee County --

3 JUDGE SLAVIN: You'll thank me later.

4 MR. BUHROW: What?

5 JUDGE SLAVIN: I'm kidding.

6 MR. BUHROW: I'm just trying to get this
7 wrapped up.

8 You had 40 up there.

9 The Lee County ZBA finds that the
10 Petitioner has committed to an acceptable shadow
11 flicker complaint resolution protocol that
12 includes:

13 Obtaining a waiver from the affected
14 residence owners; or

15 Mitigating the shadow flicker.

16 JUDGE SLAVIN: Okay. Do I hear a second?

17 MR. BOTHE: Second.

18 JUDGE SLAVIN: Hearing a second, debate.

19 Anything you want to say, Mr. Buhrow?

20 MR. BUHROW: No.

21 JUDGE SLAVIN: Any other Board member?

22 (No verbal response.)

23 JUDGE SLAVIN: Seeing none, I will put the
24 question. The question being put is whether the

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Lee County ZBA finds that the Petitioner has committed to an acceptable shadow flicker complaint resolution protocol that includes:

Obtaining a waiver from the affected residence owners; or

Mitigating the shadow flicker.

Adoption of the motion requires a vote by the majority. The vote will be by voice. All those in favor indicate by saying aye.

(All those simultaneously responded.)

JUDGE SLAVIN: Opposed by nay.

(No verbal response.)

JUDGE SLAVIN: The matter is recessed until tomorrow night, 6 o'clock, here in the Third Floor Courtroom of the Old Lee County Courthouse.

(A discussion was held off the record.)

(The hearing was concluded at 8:35 p.m.)

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On this 16th day of January, A.D., 2021, I do signify that the foregoing testimony was given before the Lee County Zoning Board of Appeals.

Bruce Forster, Chairman

Dee Duffy,
Zoning Enforcement Officer

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